IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2231 OF 2007

Laxman Shivaji Patel. ... Applicant.

V/s.

State of Maharashtra. ... Respondent.

A.P.Mundargi, senior counsel with Arpan Rajput for the applicant.

Ms.S.D.Shinde, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 2nd August 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. The applicant, who is accused No.3, has invoked jurisdiction of this court under section 439 of Code of Criminal Procedure, 1973 (Cr.P.C.) to seek bail in Sessions Case No.263/2007 arising out of C.R.No.503/2007 registered with D.N.Nagar Police Station, Mumbai, initially, for the offence under section 307 of Indian Penal Code (I.P.C.) and after death of deceased Abdul Jabbar Shaikh for the offence under section 302 of I.P.C.

The Facts:
---

3. The factual matrix reveals that on 12th November, 2006, at about 23.10 hours, D.N.Nagar Police Station received information with respect to one injured person, lying in front of Rajeev Gandhi College. On receipt of the information, Police carried the injured to Cooper Hospital. After examination it was revealed that the injured was having injuries on his head, neck and shoulder and the said injuries appeared to be caused by sharp edge weapon.

4. The deceased was resident of Navjeet Nagar, New Versova Link Road, Andheri (West), Mumbai. During the course of investigation, it was revealed that the deceased was objecting to shifting of the wine shop of the present applicant in his society. It is further alleged that this applicant with the aid of co-accused Nos.1 and 2 planned to liquidate the deceased Abdul Jabbar Shaikh.

5. The applicant came to be arrested on 16th November, 2006 along with two co-accused, he was remanded to police custody and, thereafter, to judicial custody. The chargesheet has been filed.

6. The applicant had preferred Bail Application No.436/2007 in Sessions Case No.263/2007. After hearing both side, learned 10th Ad-hoc Additional Session Judge, Sewree, Mumbai was pleased to reject the same. That, after suffering the aforesaid rejection order, jurisdiction of this Court is invoked for grant of bail.

Consideration :

7. Having heard learned senior counsel for the applicant and learned A.P.P. for the State and having seen the material available on record, in my considered view, this is not a fit case for grant of bail.

8. I was, during the course of hearing, taken through the case diary, chargesheet and the statements followed by supplementary statements recorded by the investigating officer. The *prima facie* material to allege motive for liquidating deceased is visible on record. The deceased was opposing shifting of wine shop owned by the present applicant in the society whre he was residing.

9. The material on record shows that the present applicant was using mobile phone bearing No.9869002319, whereas one Mr.Kumar, accused No.2 was having mobile phone bearing No.9892889292. The date of incident is 12th November, 2006. Both these accused on that day conversed with each other on more than 10 occasions.

10. Mr.Mehboob Badshah Abdul Shaikh in his statement dated 12th January, 2007 has also implicated the present applicant. Similarly Mrs.Ruksana @ Ranjana Jagannath Salunkhe has identified the present applicant in the identification parade. The present applicant along with others had drinks and dinner together on the day of incident. That is how the theory of last scene is sought to be placed into service by the prosecution.

11. The statements of Mr.Devendra Badappa Hebare and Mr.Shamshadali Irshadali Sayyad recorded on 1st December, 2006 and 16th December, 2006 respectively also implicate the present applicant. It is, no doubt, true that some of the statements were recorded after expiry of 15 days and some after expiry of one month from the date of incident. At this stage, it is

not possible to comment upon the truthfulness or otherwise of the said statements. At this stage, those statements will have to be accepted as it is while considering the application for bail.

12. In the aforesaid backdrop, considering prima facie; motive, seriousness of the crime, nature of offence alleged against the present applicant and the pendency of the trial, possibility of influencing the prosecution witnesses on the basis of money power flowing from the liquor business cannot be ruled out. I am not inclined to entertain this application for grant of bail

13. In the result, application is dismissed.

JUDGE